

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAPHAEL NOEL ETIENNE,

Petitioner,

v.

BEATRIZ VILLARREAL ZUNIGA,

Respondent.

CASE NO. C10-5061BHS

ORDER GRANTING
PETITIONER'S MOTION FOR
EMERGENCY *EX PARTE*
TEMPORARY RESTRAINING
ORDER

This matter comes before the Court on Petitioner's Motion for Emergency *Ex Parte* Temporary Restraining Order and Preliminary Injunctive Relief Regarding Two Minor Children (Dkt. 4). The Court has considered the pleadings filed in support of the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

I. FINDINGS OF FACT

1. This Court has jurisdiction over Respondent Beatriz Villarreal Zuniga and the subject matter of this action.

2. Petitioner Raphael Noel Etienne alleges that he and Respondent Beatriz Villarreal Zuniga are the parents of two minor children, E.N. and B.N., who are both under the age of sixteen. Petitioner further alleges that he and Respondent jointly cared

1 for the children until Respondent left Mexico with them in August 2008. Petitioner
2 alleges that in July 2008, Respondent and the two children left Mexico with his
3 permission and came to the United States for a one-month vacation. Petitioner further
4 alleges that he and Respondent agreed, in August of that year, that Respondent and the
5 children would stay in the United States for an additional six months so that the children
6 could study English. Petitioner alleges that in February 2009, Respondent informed him
7 that she and the children would not be returning to Mexico.

8 3. Since Respondent left Mexico with the children, Petitioner alleges that he
9 has had limited contact with the children and is communicating with them only by
10 telephone or text message. He has filed a Request for Return with the Mexican Central
11 Authority, which forwarded his Request to the U.S. Department of State. On January 29,
12 2010, Petitioner filed a Petition for Return with this Court pursuant to the Hague
13 Convention and the International Child Abduction Remedies Act (“ICARA”), 42 U.S.C.
14 § 11601, *et. seq.* The Petition for Return seeks to have the children returned to Mexico for
15 the ultimate determination of their custody.

16 4. Based on Petitioner’s allegations, once Respondent is served with the
17 Petition for Return, there is some risk that Respondent will flee Washington with the
18 children.

19 5. The issuance of a restraining order is warranted, prohibiting the Respondent
20 from removing the children from Washington State, and directing her to surrender all
21 passports, visas and travel documents belonging to the children pending a preliminary
22 hearing on the Petition for Return.

23 **II. CONCLUSIONS OF LAW**

24 1. Because of the risk that Respondent will flee this jurisdiction with the
25 children, the Court finds it necessary to grant this order without notice.

26 2. To obtain preliminary injunctive relief, the moving party must show: (1) a
27 likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving
28

1 party in the absence of preliminary relief; (3) that a balance of equities tips in the favor of
2 the moving party; and (4) that an injunction is in the public interest. *Winter v. Natural*
3 *Res. Def. Council, Inc.*, ___ U.S. ___, 129 S. Ct. 365, 376 (2008).

4 3. Based on the findings set forth above and the evidence submitted to the
5 Court, there is a likelihood that Petitioner will succeed on the merits of the Petition for
6 Return under the Hague Convention; irreparable injury is likely if temporary relief is not
7 granted based upon Petitioner's allegation that Respondent has wrongfully removed or
8 retained the children from the jurisdiction of their habitual residence; the balance of
9 equities tips in favor of Petitioner; and temporary relief is in the public interest.

10 **III. ORDER**

11 Therefore, it is hereby

12 **ORDERED** that Petitioner's Motion for Emergency *Ex Parte* Temporary
13 Restraining Order and Preliminary Injunctive Relief Regarding Two Minor Children
14 (Dkt. 4) is **GRANTED** as follows:

15 1. The United States Marshals Service shall serve Respondent, located at
16 12721 47th Avenue SW, Apt. 14, Lakewood, WA 98499, with this order, as well as the
17 pleadings filed by Petitioner in this case;

18 2. The United States Marshals Service shall ask Respondent to surrender all
19 passports, visas and travel documents belonging to the children, which will remain in the
20 custody of this Court until the hearing on Petitioner's motion for preliminary injunction;


21 3. Respondent, or any other person, is prohibited from removing the children
22 from Washington State until the hearing on Petitioner's motion for preliminary relief;

23 4. A hearing on Petitioner's request for preliminary injunctive relief shall
24 occur on March 25, 2010 at 4:15 PM in Courtroom E at the Federal Courthouse in
25 Tacoma, WA;

1 5. At that hearing, the Court shall grant or deny Petitioner's motion for the
2 continuation of these emergency remedies pending the Court's final decision on the
3 Petition for Return or other order of this Court; and

4 6. This order shall expire on March 26, 2010, one day after the scheduled
5 hearing on Petitioner's motion for preliminary relief, unless the order is extended for
6 good cause.

7 DATED this 16th day of March, 2010.

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10 BENJAMIN H. SETTLE
United States District Judge